

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

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In the Matter of)
)
Distribution of) Copyright Royalty Board
2004-2009) Docket No. 2012-6 CRB CD 2004-2009
Cable Royalty Funds) (Phase 2)

**INDEPENDENT PRODUCERS GROUP'S
OPPOSITION TO JSC MOTION TO AMEND ORDER
REQUIRING MORE SPECIFIC STATEMENT**

Worldwide Subsidy Group LLC (a Texas limited liability company) dba Independent Producers Group ("IPG"), hereby opposes the *Motion of the Joint Sports Claimants to Amend Order Requiring More Specific Statement*, on the following grounds:

- A. The JSC motion has been rejected on three prior occasions. No statute or rule authorizes advance discovery relating to claims.**

The JSC motion is effectively a repeat of a motion that the JSC sought in connection with the 2000-2003 cable proceedings wherein the JSC sought, in advance of all other parties, to litigate only its own particular claims. In the 2000-2003 proceedings, the JSC requested that IPG be required to prematurely identify each of the claimed works falling into the sports programming category, a request that was rejected by the CRB.¹ See *Distribution of 2000-2003 Cable Royalty Funds*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II), Order of August 17, 2011, attached hereto as **Exhibit A**.

In this instance, the JSC similarly seek to engage in advance discovery, and seek information that can only be derived through the same process necessary to obtain the

¹ The CRB's rejection was, in fact, the third such rejection of the JSC request, as the Copyright Office twice rejected the JSC's demand that IPG be required to identify by title the programming. Order, *Docket No. 2001-8 CARP CD 98-99, et al.* (Feb. 8, 2006); and Order, *Docket No. 2001-8 CARP CD 98-99, et al.* (June 26, 2006, at 4-5) ("For this reason the Office once again denies JSC's request to have IPG identify the teams whose telecasts are included in IPG's claims.")

information previously denied by the Judges, i.e., polling all of the thousands of works controlled by IPG-represented claimants during a multi-year period, identification of which of those works were distantly retransmitted during such multi-year period, then a determination as to which Phase I category is appropriate for the work. The JSC request compels IPG-represented parties to make affirmations that cannot yet be yielded for several months, nor is there any basis in any statute or regulation suggesting that such affirmation is required at this early juncture. As noted by the Judges in their August 17, 2011 Order:

“While [filing separate petitions to participate for each of the program categories] may well have been helpful, there is no specific requirement in the statute or the rules that obliges a participant to file separate petitions for each of the program categories.” Exh. A at 1.

Quite simply, the JSC again seek a departure from the logical or required process.

IPG sits in the unique position of being one of the few entities that represent parties whose works are not limited to a single category of programming. The effect of the JSC-sought order would therefore disproportionately affect IPG. IPG represents approximately 2,500 unique satellite claims, and 1,300 unique cable claims. What the JSC seek is to have IPG, in a matter of a week, confirm information relating to *each* of those claims. This is the underlying intent of the JSC motion.

While nonetheless advocating that a different set of rules be applied to IPG, in response to the JSC’s previously-denied motion to engage in discovery prior to the filing of written direct statements, the MPAA responded as follows:

“The Judges’ regulations clearly specify that discovery in cable and satellite distribution proceedings will take place following the filing of written direct or rebuttal statements. *See* 37 C.F.R. Sections 351.6,

351.11. MPAA-represented Program Suppliers are unaware of any statutory or regulatory provision that allows a party to a proceeding to serve a discovery request on another party in the proceeding other than as contemplated by these regulations. While both the Copyright Act and the Judges' regulations encourage the parties to engage in voluntary negotiations prior to the filing of written direct statements, *see* 17 U.S.C. Section 803(b)(3)(A)(ii); 37 C.F.R. Section 351.2, those negotiations are *voluntary* and impose no discovery obligations on the parties. Among the policy reasons for such a rule is the protection afforded a party from the burden of providing discovery materials when that party may still be in the process of formulating its case. This is particularly important for a party such as MPAA-represented Program Suppliers who claim rights to several thousand programs and are saddled with producing thousands of pages of electronic and hard copies of discovery materials. If granted, JSC's motion would entitle JSC to program information that typically would underlie a party's claim to share of royalties expressed in its written direct statement. It is, in effect, impermissible discovery because it precedes the filing of written direct statements and the post-filing Judges' order that would typically set the discovery schedule."²

IPG believes that the foregoing arguments remain valid, and on such basis preclude the Judges from granting the JSC their requested relief.

B. The JSC do not see "expeditious resolution" of issues, but only to disadvantage IPG.

The pretext by which the JSC again asks that IPG be ordered to take an action that would be of monumental effort to IPG, and no effort to the JSC, is the JSC's desire for "expeditious resolution of all issues in this proceeding". Motion at p.2. If accurate, then the JSC would be engaging in a meaningful exchange of information with IPG sufficient to foster "expeditious resolution" of these proceedings.

The JSC, however, have not done so. In a motion that IPG intends to imminently file with the Judges, the JSC have refused IPG's request for the actual dollar amount allocable to the sports programming category for this proceeding. In the immediately preceding Phase 2 proceedings, IPG sought such information by motion, and the JSC was

² See "MPAA Opposition, In Part, to JSC's Motion to Compel Identification of IPG-represented Sports Programs", *Distribution of 2000-2003 Cable Royalty Funds*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II), filed August 9, 2011.

compelled to produce it. Nevertheless, the JSC continue to refuse such information to IPG as it relates to this proceeding, under an identical set of circumstances.

While it is not IPG's intent to argue the merits of that issue herein, the existence of such issue nevertheless reflects the transparent nature of the JSC's assertion that "expeditious resolution" is the desired result.³ The JSC motion, in fact, is merely an attempt to heave requirements onto IPG that have no basis in the statutes or regulations.

CONCLUSION

The regulations governing this matter already sufficiently address IPG's obligations, and the JSC's anxious desire to assess their position at this time, does not in and of itself constitute "good cause" for deviating from the existing regulations, and disparately placing requirements on IPG that are not otherwise required by the regulations, or effectively placed on the JSC.

Respectfully submitted,

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³ To avoid revelation of various matters being confidentially discussed between the parties, IPG refrains from attaching a copy of the October 7, 2013 email from the JSC counsel relating to such matter. The JSC have conditioned their "discussion" of the release of such information on IPG's identification of sports-related claims, but only after the JSC unilaterally determines that such claims are compensable in the sports programming category. As the Judges likely recall, the issue as to the definition of "sports category" claims was a significant issue in the 2000-2003 cable proceedings, the determination of which remains pending and is not yet "final" pursuant to 17 U.S.C. Section 803(d)(1).

CERTIFICATE OF SERVICE

I hereby certify that on this 14 day of October 2013, a copy of the foregoing was sent by overnight mail to the parties listed on the attached Service List.



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